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August 8, 2008

By Hand Delivery

Thomasenia P. Duncan
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D C 20463

MUR # 6051

Re Complaint Against Wal-Mart Stores, Inc. For Unlawful Corporate Expenditures

Dear Ms. Duncan

American Rights at Work, the American Federation of Labor and Congress of Industrial Organizations, Change to Win and WakeUpWalMart.com submit this complaint of unlawful federal election activity against Wal-Mart Stores, Inc. ("Wal-Mart") pursuant to section 1114 of the Commission's regulations.

On August 1, 2008, the *Wall Street Journal* reported (copy attached) that Wal-Mart had undertaken a campaign to persuade its employees explicitly to vote against Senator Barack Obama for President of the United States. Specifically, the *Journal* reported that in recent weeks "thousands" of Wal-Mart's store managers and department supervisors have been "summoned to mandatory meetings" at which the company informed these employees that Wal-Mart opposes the federal Employee Free Choice Act, its enactment could deny Wal-Mart employees a vote on whether to form a union, and their voting for Senator Obama and other Democrats would lead to its enactment.

The Employee Free Choice Act is strongly opposed by Wal-Mart because it would, in fact, go a long way toward rectifying the imbalance that currently exists between workers seeking to form unions and employers that oppose them. Currently, the law fails to effectively protect workers seeking to organize, and employers are able to violate the law with virtual impunity. This legislation would allow workers throughout the United States to decide whether or not to form a union. If an employer intimidates or obstructs a worker's free

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choice, it would incur increased penalties. Senator Obama is a co-sponsor of the legislation, while his Republican opponent, Senator John McCain, opposes the bill and voted against bringing it to the Senate floor last year.

A Wal-Mart spokesman confirmed to the *Journal* that the meetings had taken place "nationwide." They were led by human-resources managers who had "received training from Wal-Mart on the implications of the Employee Free Choice Act." The *Journal* reported, on the basis of interviews with attendees from Maryland, Missouri and other states, that Wal-Mart made clear that "voting for Democratic presidential hopeful Sen. Barack Obama would be tantamount to inviting unions in" because the Employee Free Choice Act would become law. Notably, these meetings occurred against a backdrop, widely reported for some time, of similar "captive audience" meetings conducted by Wal-Mart among its non-supervisory employees as part of its longstanding campaign to persuade them to vote against union representation itself, a context that would not be lost on those subjected to the electoral captive-audience meetings reported by the *Journal*.

Notwithstanding Wal-Mart's claim that it did not tell attendees how to vote, informing employees that it is imperative that Employee Free Choice Act not be enacted and, simultaneously, that their voting for Senator Obama and other Democrats would lead to its enactment constitutes express advocacy under well-established precedent. In *Federal Election Commission v. Massachusetts Citizens For Life, Inc.*, 479 U.S. 238 (1986), for example, the Supreme Court held that a nonprofit organization engaged in express advocacy when it urged readers to vote pro-life and then identified, in the same communication, the candidates whom it regarded as meeting this test. See also 11 C.F.R. § 100.22(a) (express advocacy includes "'vote Pro-Life' or 'vote pro-Choice' accompanied by a listing of clearly identified candidates described as Pro-Life or Pro-Choice"). As a Wal-Mart customer-service supervisor from Missouri told the *Journal*, "They were telling me how to vote."

The Federal Election Campaign Act allows a corporation such as Wal-Mart to communicate express advocacy about federal candidates only to its restricted class, see 2 U.S.C. § 441b(a) and (b)(2)(A), 11 C.F.R. § 114.3(a), including its executive or administrative personnel, and their families. 11 C.F.R. § 114.1(j). However, the regulations make clear that the restricted class includes only those employees "who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities." 11 C.F.R. § 114.1(c). "Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees" are expressly excluded from the restricted class. 11 C.F.R. § 114.1(c)(2)(ii). In this regard, the *Journal* reported that department supervisors at Wal-Mart are hourly, not salaried, employees. In addition, the Wal-Mart spokesman referred to the persons who attended the meetings as "associates," a term used by Wal-Mart to refer to its salespeople and other regular hourly employees.

Accordingly, based on the information reported by the *Wall Street Journal*, there is reason to believe that Wal-Mart Stores, Inc. has made prohibited corporate expenditures by expressly advocating against Senator Obama's election to employees who were not in its

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restricted class in violation of 2 U S C § 441b We request that the Commission immediately open an investigation to determine whether a violation occurred and, if so, to take all appropriate steps to remedy that violation of federal election law

The corporate headquarters of Wal-Mart Stores, Inc are located at 702 SW 8th Street, Bentonville, Arkansas 72716-8611

The addresses of the complainants are as follows

American Rights at Work
1100 17th Street, NW
Suite 950
Washington, D C 20036

AFL-CIO
815 16th Street, NW
Washington, DC 20006

Change to Win
Suite 900
1900 L Street, NW
Washington, DC 20036

WakeUpWalMart.com
1775 K Street, NW
Washington, DC 20036

Respectfully submitted on behalf of all
Complainants,


Mary Beth Maxwell

I declare under the penalty of perjury that all statements in the foregoing complaint made on the basis of my personal knowledge are true and correct to the best of my knowledge


Mary Beth Maxwell

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Annette M. Sabella
Notary Public, District of Columbia
My Commission Expires 11/14/2011

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Wal-Mart Warns of Democratic Win

By ANN LEMMERMAN and KIRK MANER
August 1 2008 Page A1

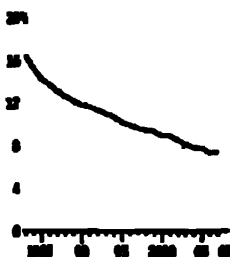
Wal-Mart Stores Inc. is mobilizing its store managers and department supervisors around the country to warn that if Democrats win power in November, they'll likely change federal law to make it easier for workers to unionize companies — including Wal-Mart.

In recent weeks, thousands of Wal-Mart store managers and department heads have been summoned to mandatory meetings at which the retailer stresses the downside for workers if stores were to be unionized.

According to about a dozen Wal-Mart employees who attended such meetings in seven states, Wal-Mart executives claim that employees at unionized stores would have to pay hefty union dues while getting nothing in return, and may have to go on strike without compensation. Also, unionization could mean fewer jobs as labor costs rise.

Thinning Ranks

Percentage of U.S.
private sector workers
belonging to unions



Source: Labor Department via
Bureau of Economic Analysis

The actions by Wal-Mart — the nation's largest private employer — reflect a growing concern among big business that a reinvigorated labor movement could reverse years of declining union membership. That could lead to higher payroll and health costs for companies already being hurt by rising fuel and commodities costs and the tough economic climate.

The Wal-Mart human-resources managers who run the meetings don't specifically tell attendees how to vote in November's election, but make it clear that voting for Democratic presidential hopeful Sen. Barack Obama would be tantamount to

inviting unions in, according to Wal-Mart employees who attended gatherings in Maryland, Missouri and other states.

"The meeting leader said, 'I am not telling you how to vote, but if the Democrats win, this bill will pass and you won't have a vote on whether you want a union,'" said a Wal-Mart customer-service supervisor from Missouri. "I am not a stupid person. They were telling me how to vote," she said.

"If anyone representing Wal-Mart gave the impression we were telling associates how to vote, they were wrong and acting without approval," said David Tovar, Wal-Mart spokesman. Mr. Tovar acknowledged that the meetings were taking place for store managers and supervisors nationwide.

Wal-Mart's worries center on a piece of legislation known as the Employee Free Choice Act, which companies say would enable unions to quickly add millions of new members. "We believe EFCA is a bad bill and we have been on record as opposing it for some time," Mr. Tovar said. "We feel educating our associates about the bill is the right thing to do."

Other companies and groups are also making a case against the legislation to workers. Laundry company Cutler Corp., which has been fighting a

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multiyear organizing campaign by Unite Here, relaunched a Web site July 14 called *CintasVotes*. The site instructs visitors to take action by telling members of Congress to oppose the legislation.

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"We feel it's important that our employee partners fully understand the implications that the Employee Free Choice Act could have on their work environment and benefits," said Heather Tramer, a Cintas spokeswoman.

Business-backed organizations are also running ads aimed at building opposition to the bill, including the Coalition for a Democratic Workplace, which counts several hundred industry associations as members. Another group, the Employee Freedom Action Committee, is run by former tobacco lobbyist Rick Berman. The groups, which aren't affiliated with each other, say they have a total of \$50 million in funding. Neither will disclose which companies or individuals have provided funding.

The U.S. Chamber of Commerce has made defeat of the legislation a top priority. In the past six months, it has flown state and local Chamber members to Washington to lobby members of Congress. On Thursday, the Chamber began airing a television ad in Minnesota and plans to run ads in other states as part of a broader campaign.

The bill was crafted by labor as a response to more aggressive opposition by companies to union-organizing activity. The AFL-CIO and individual unions such as the United Food and Commercial Workers have promised to make passage of the new labor law their No. 1 mission after the November election.

First introduced in 2003, the bill came to a vote last year and sailed through the Democratic-controlled House of Representatives, but was blocked by a filibuster in the Senate and faced a veto threat by the White House. The bill was taken off the floor and its backers pledged to reintroduce it when they could get more support.

The November election could bring that extra support in Congress, as well as the White House if Sen. Obama is elected and Democrats extend their control in the Senate. Sen. Obama co-sponsored the legislation, which also is known as "card check," and has said several times he would sign it into law if elected president. Sen. John McCain, the likely Republican presidential nominee, opposes the Employee Free Choice Act and voted against it last year.

Wal-Mart's labor-relations meetings are led by human-resources managers who received training from Wal-Mart on the implications of the Employee Free Choice Act.

Fine Legal Line

Wal-Mart may be walking a fine legal line by holding meetings with its store department heads that link politics with a strong unionization message. Federal election rules permit companies to advocate for specific political candidates to its executives, stockholders and salaried managers, but not to hourly employees. While store managers are on salary, department supervisors are hourly workers.

However, employers have fairly broad leeway to disseminate information about candidates' voting records and positions on issues, according to Jan Breen, a Washington attorney and expert on election law.

Both supporters and opponents of the Employee Free Choice Act believe it would simplify and speed labor's ability to unionize companies. Currently, companies can demand a secret-ballot election to determine union representation. Those elections often are preceded by months of strident employer and union campaigns.

Under the proposed legislation, companies could no longer have the right to insist on one secret ballot. Instead, the Free Choice, or "card check," legislation would let unions form if more than 50% of workers simply sign a card saying they want to join. It is far easier for unions to get workers to sign cards because the organizers can approach workers repeatedly, over a period of weeks or months, until the union garners enough support.

Employers argue that the card system could lead to workers being pressured to sign by pro-union colleagues and organizers. Unions counter that it shields workers from pressure from their employers.

On June 30 the National Labor Relations Board ruled that Wal-Mart illegally fired an employee in Kingman, Ariz., who supported the UFCW and illegally threatened to freeze merit-pay increases if employees voted for union representation. The decision came eight years after the organizing campaign failed, and four years after the case was originally heard.

"We've always maintained the termination was not related to the union and that there was nothing unlawful about an answer provided an associate about merit pay," said Mr. Tovar, the Wal-Mart spokesman. "Following the decision, we were considering offering reinstatement, but that is on hold, since the [union] appealed the decision."

Unions consider the Employee Free Choice Act as vital to the survival of the labor movement, which currently represents 7.9% of private-sector workers, half the percentage it did 25 years ago. The Service Employees International Union and the legislation would enable it to organize a million workers a year, up from its current pace of 100,000 workers a year.

Shift in Support

Wal-Mart political action committee contributions to federal candidates

Parties to: ■ Democrats ■ Republicans



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The Underdogs

The business-backed lobbying groups are running ads in states where a win by a Democratic Senate candidate would boost support for the legislation in the Senate, saying the loss of secret ballots exposes workers to bullying labor bosses. In one, they use an actor from the "Sopranos" TV series about mob life to hammer home their point.

Business groups say they're the underdogs since they will be outspent by unions by a wide margin. Labor has pledged to spend \$300 million on the election and securing passage of the Employee Free Choice Act, compared with under \$100 million by business groups, according to Steven Law, chief legal officer of the U.S. Chamber of Commerce. The Chamber's strategy is to focus on the Senate, where labor needs eight more supporters of the legislation to reach the 60 votes needed to overcome a filibuster.

"This is a David-and-Goliath confrontation, but we believe we'll have enough stones in the sling to knock this out," said Mr. Law.

Wal-Mart is a powerful ally. Through almost all of its 48-year history, Wal-Mart has fought hard to keep unions out of its stores, flying in labor-relations rapid-response teams from its Bentonville, Ark., headquarters to any location where union activity was building. The United Food and Commercial Workers was successful in organizing only one group of Wal-Mart workers — a small number of butchers in East Texas in early 2000. Several weeks later, the company phased out butchers in all of its stores and began stocking prepackaged meat. When a store in Canada voted to unionize several years ago, the company closed the store, saying it had been unprofitable for years.

Labor has fought back with a campaign to portray Wal-Mart as treating its workers poorly. The UFCW helped employees file a series of complaints about the company's overtime, health-care and other policies with the National Labor Relations Board. Dozens of class-action lawsuits were filed on behalf of workers, many of which are still winding their way through the courts.

Wal-Mart has been trying to burnish its reputation by improving its worker benefits and touting its commitment to the environment. On the political front, it's hedging its bets, spreading its financial contributions on both sides of the political divide.

Twelve years ago, 98% of Wal-Mart's political donations went to Republicans. Now, as the Democrats seem poised to gain control in Washington, 48% of its \$2.2 million in political contributions go to Democrats and 52% to Republicans, according to the Center for Responsive Politics, a nonpartisan organization that tracks political giving.

Write to Ann Zimmerman at ann.zimmerman@wsj.com and Lisa Maher at lisa.maher@wsj.com

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